

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**FIRST MERCURY INSURANCE
COMPANY**

Plaintiff,

v.

ADMIRAL INSURANCE COMPANY

Defendants.

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CIVIL ACTION NO.:

PLAINTIFF'S ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW, Plaintiff FIRST MERCURY INSURANCE COMPANY (hereinafter "FMIC") pursuant to 28 U.S.C. § 2201, and files this its Complaint for Declaratory Judgment, seeking construction of a liability insurance policy and a declaratory judgment that ADMIRAL INSURANCE COMPANY ("ADMIRAL") has a duty to defend and/or indemnify West Roofing, Inc. (hereinafter "West Roofing") and thereby share in the past and future costs of defense and indemnity incurred by FMIC on behalf of West Roofing, and in support thereof will show the Court as follows:

**I.
JURISDICTION, PARTIES AND VENUE**

1. Plaintiff FMIC is incorporated in the State of Illinois with its principal place of business located at 29621 Northwestern Highway, Southfield, Michigan 48034.
2. Defendant ADMIRAL is incorporated in the State of Delaware with its principal place of business located in Cherry Hill, New Jersey. ADMIRAL has not designated an attorney for

service with the Texas Department of Insurance. ADMIRAL may be served by serving the Commissioner of Insurance for the State of Texas.

3. This is a civil action in which this Court has original jurisdiction under 28 U.S.C. § 1332(a). Complete diversity of citizenship existed between Plaintiff and Defendants at the time of filing this suit. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(a)(1) and (c), because Defendant ADMIRAL conducts business in this District and maintains the minimum contacts necessary in the State of Texas to establish venue herein.

II. FACTS

6. West Roofing was named as a defendant in a suit styled and numbered *Grahmann, et al v. West Roofing, et al*, Cause No. 429-013530-2008 in the 429th Judicial District Court of Collin County, Texas (the “Underlying Lawsuit”).

7. The Underlying Lawsuit involves claims relating to the alleged defective construction of and resulting damages to a new addition of the St. Elizabeth Ann Seton Catholic Church in Plano, Texas. West Roofing allegedly subcontracted to construct portions of the roof.

7. FMIC issued liability policy number FMTX001350 to West Roofing, Inc., effective 12/1/05 to 12/1/06 (“FMIC Policy”).

8. ADMIRAL issued liability policy numbers CA000010243-01 effective 12/1/06 to 12/1/07 and 12/1/07 to 12/1/08.

8. A justiciable case or controversy exists between the parties to this lawsuit. Plaintiff FMIC has requested upon multiple occasion that ADMIRAL share in the costs of defense of West Roofing, to no avail and despite the fact that ADMIRAL has conceded to have a duty to

defend, has agreed to defend West Roofing, and at one time hired counsel to defend West Roofing.

III.
PRAYER

9. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201, for the purpose of determining an actionable and justiciable controversy between the parties, as hereinafter more fully appears.

10. For the reasons stated, Plaintiff FMIC prays that Defendants ADMIRAL be cited to appear herein and that upon trial of this case, Plaintiff FMIC receive the following declarations:

- A. ADMIRAL has a duty to reimburse FMIC for 50% defense expenses and costs incurred on behalf of West Roofing in the Underlying Lawsuit;
- B. ADMIRAL has a duty to share 50% of all future defense expenses and costs incurred on behalf of West Roofing in the Underlying Lawsuit;
- C. ADMIRAL has a duty to share all future indemnity costs upon final resolution of the Underlying Lawsuit against West Roofing;
- C. All such other and further relief to which FMIC may show itself justly entitled.

Respectfully submitted,

COOPER & SCULLY, P.C.

By: /s/ R. Brent Cooper
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**ATTORNEYS FOR FIRST MERCURY
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